

90 OCT 25 PM 3:35

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
National Republican Senatorial)	MUR 2314
Committee and James L. Hagen, as)	
treasurer)	
)	
Jim Santini for Senate and)	
J. Glen Sanford, as treasurer)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by a complaint filed by Richard Segerblom on January 13, 1987. On July 28, 1987, the Commission found reason to believe that the National Republican Senatorial Committee ("NRSC") and its treasurer¹ violated 2 U.S.C. §§ 441a(h), 434(b), and 11 C.F.R. § 110.6(d)(2), and that Jim Santini for Senate ("Santini Committee") and J. Glen Sanford, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b), and 11 C.F.R. § 110.6(d)(2), for failing to report contributions to the Santini Committee as contributions from the NRSC. In October 1987, the Commission rejected the recommendation of this Office to merge this matter with MUR 2282. Then on January 24, 1989, the Commission found reason to believe that the NRSC and its

1. At the time of the July 28, 1987 reason to believe finding, Richard G. Nelson was treasurer of the NRSC. The NRSC's current treasurer is James L. Hagen and his name has been substituted for Mr. Nelson's as treasurer.

treasurer² violated 2 U.S.C. § 434(b) and 11 C.F.R. § 106.1 and that the Santini Committee and its treasurer violated 2 U.S.C. § 434(b) and 110.6(c)(3), for failing to report solicitation costs for the NRSC Direct-To program as contributions from the NRSC.

A. The NRSC Direct-To Program

During the 1985-86 election cycle, the NRSC initiated a program, known as the "Direct To" program, to enable contributors to direct their contributions to specific Republican Senatorial candidates. There were five different "Direct To" operations targeted at different contributor bases within the Republican Party, which are described below. The Santini Committee received contributions from each of those programs.

1. Direct-To

This program was conducted by the NRSC between November 1985 and November 1986. Certain selected contributions to the NRSC were held in a special segregated NRSC account. An NRSC representative would then call the contributor and suggest that the contributor designate some or all of his contribution to a federal candidate named by the NRSC representative. A minimum of three candidates was suggested by the NRSC caller. The

2. At the time of the January 24, 1989 reason to believe finding, Frederick M. Bassinger was treasurer of the NRSC. The NRSC's current treasurer, James L. Hagen, has been substituted for Mr. Bassinger in this matter.

contributor could direct his contribution to one, all, or none of the candidates suggested by the NRSC caller. The contributor could also direct his contribution to a candidate not identified by the NRSC caller. If a contributor chose to designate some or all of his contribution to specific candidates, the NRSC sent a candidate support verification form to the contributor which identified the candidate(s) to receive his contribution, and asked the contributor to sign and return to the NRSC. Any contribution not designated by the contributor was returned to the NRSC account. No contribution was held in the separate segregated account for more than 10 days.

The Santini Committee received \$71,627.33 from the NRSC Direct-To program, in the form of NRSC checks.

2. Direct-To Auto

This program was a direct mail program conducted between September and November 1986. Solicitation letters were sent out on the letterhead of then Vice President George Bush. The letters mentioned four states where Republican Senate candidates needed funds and stated that contributions submitted by the contributor would be split equally among the four campaigns. The letters mentioned only the name of the states, not the candidates names. There were 24 versions of the solicitation letter. Santini's state, Nevada, appeared in 12 versions of the letter. Potential contributors were asked to make their checks payable to the NRSC, the Republican Presidential Task Force or the Republican Inner Circle, but to direct their contributions for

equal division among four candidates mentioned in the solicitation letter. The solicitation contained a reply card which stated that the contribution would be split equally amount the four campaigns.

The Santini Committee received \$399,131.80 from the NRSC Direct-To Auto program, all in the form of NRSC checks.

The Direct-To Auto program was the only one of the NRSC Direct-To programs addressed in MUR 2282 and the ensuing litigation.³ None of the other four Direct-To programs were addressed in MUR 2282.

3. Miscellaneous Conduiting

The NRSC's "Miscellaneous Conduiting" portion of the Direct To program did not involve any specific written solicitations. On occasion, between July and November 1986, the NRSC received solicited and unsolicited contributions for forwarding to particular candidates. There were no verification letters because the contributions were made payable directly to a particular candidate, or accompanied by a letter of instruction directing the amount contributed to a particular candidate.

The Santini Committee received a total of \$264,197.20 from the Miscellaneous Conduiting program -- \$235,901.66 in the form of contributor checks and \$28,295.54 in the form of NRSC checks.

3. See discussion of MUR 2282 infra, pp. 6-7.

4. Trust Program

This program involved solicitations by phone and at NRSC meetings, of individuals who had contributed \$10,000 to the NRSC. The NRSC made a concerted effort to get those individuals to earmark their contributions to particular Senate candidates. These efforts were conducted by the NRSC from November 1985 through November 1986. A total of \$113,475 was passed on to the Santini Committee through the Trust Program. Most of the contributions received by the Santini Committee through the Trust Program were in the form of contributor checks (\$107,875). The contributions that were sent in the form of NRSC checks (\$5,600) were verified by letter or a phone call and NRSC internal memo.

5. Majority '86

This program was conducted from November 1985 through November 1986. This program involved NRSC solicitations requesting a pledge of \$5,000 or more to the NRSC with \$4,000 earmarked to particular Senate candidates and the remainder of the contribution for the NRSC operating account. Also, contributions to the NRSC's Inner Circle were put in the Majority '86 account while the NRSC contacted the contributor to suggest that the contributor earmark the contribution for a Senate candidate. These checks put in the Majority '86 account were not held for more than 10 days.

The Santini Committee received a total of \$75,575 from the Majority '86 program -- \$43,000 in the form of contributor checks and \$32,575 in the form of NRSC checks.

B. Request for Preprobable Cause Conciliation

On May 22, 1989, the NRSC requested preprobable cause conciliation. On July 13, 1989, the Commission declined to enter into preprobable cause conciliation with the NRSC at that time. The NRSC's request to enter into preprobable cause conciliation was limited to the findings relating to the allocation and reporting of the solicitation costs related only to candidate-specific solicitations. The NRSC's request for preprobable cause conciliation in MUR 2314 did not include the issues of direction or control or solicitation costs for non-candidate specific solicitations related to the Direct-To programs.

Counsel for the NRSC limited the request for preprobable cause conciliation to solicitation costs for the 5 Direct-To earmarking programs based on the Commission's 1988 determination of MUR 2282, and Commissioner Josefiak's Statement of Reasons dated 1-30-89. MUR 2282 involved the NRSC's Direct-To Auto program, only 1 of the 5 Direct-To earmarking programs. On 12-29-88, a Conciliation Agreement in MUR 2282 was signed with the finding that there was probable cause to believe that the NRSC and its treasurer, violated 2 U.S.C. § 434(b) by failing to report as contributions to twelve authorized committees \$608,568 in costs related to unsuccessful solicitations.

However, since the Conciliation Agreement in MUR 2282 was signed, Common Cause filed a suit against the Commission for its dismissal of the direction or control part of the Complaint in

MUR 2282. Then on 1-24-90, the U.S. Federal District Court held that dismissal of part of complaint against the NRSC was arbitrary and capricious and contrary to law, and remanded the matter back to the Commission. See Common Cause v. FEC, 729 F. Supp. 148 (D.D.C. 1990). On 2-15-90 the Commission voted to reopen MUR 2282 for further proceedings consistent with the district court's decision and found probable cause to believe that the NRSC and its treasurer violated 2 U.S.C. §§ 434(b) and 11 C.F.R. § 110.6(d)(2) by failing to report as contributions from itself approximately \$2,718,813.60 in contributions forwarded in 1986 to twelve authorized committees of candidates for the U.S. Senate; and found probable cause to believe that the NRSC and its treasurer violated 2 U.S.C. § 441a(h) by exceeding the \$17,500 limitation on contributions to twelve authorized committees of candidates for the U.S. Senate by approximately \$2,676,916. The Commission failed to conciliate with the NRSC on these findings. So, on 8-21-90, the Commission voted to file a civil suit against the NRSC and its treasurer, which was filed on 8-24-90. That matter is pending before the U.S. District Court.

Because of the above circumstances and the inclusion of 5 separate solicitation programs in this matter, all of the issues should be fully briefed. This Office believes it would be awkward and difficult to separate the solicitation costs and direction and control issues regarding the same contributions and to enter into preprobable cause conciliation on only the solicitation costs while briefing the direction and control issue. The issue of direction and control is so closely related

to the issue of solicitation costs that it should be analyzed and resolved before the issue of solicitation costs is addressed. Therefore, this Office believes it would be impractical to separate these issues and enter into pre-probable cause conciliation negotiations on only one of the issues.

Furthermore, the NRSC has proposed to enter into conciliation only on the solicitation costs related to candidate-specific fundraising solicitations and not on all of the costs attributed to the Direct-To Program. The NRSC contends that it does not consider the costs of its general, non-candidate specific solicitations relevant to the resolution of this MUR. However, the Direct-To Program included general solicitations made in contemplation of subsequently contacting contributors to have the contributions earmarked to the Santini Committee. This issue also needs to be addressed in a brief. Therefore, this Office recommends that the better course is for the Commission to decline the request to enter into preprobable cause conciliation with the NRSC and its treasurer. This Office will then prepare a brief on all of the issues in this matter.

II. RECOMMENDATIONS

1. Decline to enter into conciliation with the National Republican Senatorial Committee and James L. Hagen, as treasurer, prior to a finding of probable cause to believe.
2. Approve the attached letter.

Date

10/25/90


Lawrence M. Noble
General Counsel

Attachments

1. Request for conciliation
2. Proposed letter

Staff Assigned: Elizabeth Campbell